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Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Facilitating the Provision of Spectrum-Based
Services to Rural Areas and Promoting
Opportunities for Rural Telephone Companies
To Provide Spectrum-Based Services

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WT Docket No. 02-381

COMMENTS OF THE RURAL SPECTRUM ALLIANCE

The Rural Spectrum Alliance ("the Alliance"), by counsel, hereby responds to the Commission's Public Notice inviting comment on the effectiveness of current spectrum policies in promoting the deployment of wireless services in rural areas.²

The Commission is to be commended for undertaking this examination of its progress in implementing the dual statutory mandates to (1) provide rural telephone companies and other small businesses with meaningful opportunities to obtain spectrum, and (2) ensure that spectrum-based services are being deployed in rural areas.³ This assessment should result in swift and decisive action to ensure the achievement of Congressional directives. Specifically, the Alliance proposes the adoption of a "fill-in" policy for the unserved portions of A and B Block PCS

¹ The Alliance is an *ad hoc* group of rural telecommunications providers established to explore and promote opportunities to obtain spectrum in underserved rural areas.

*In the Matter of Facilitating the **Provision** of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services: Notice of Inquiry*, WT Docket No. 02-381, FCC 02-325 (rel. Dec. 20, 2002) ("NOI").

See 47 U.S.C. §§ 309(j)(3)(A)-(B) and 47 U.S.C. § 309(j)(4)(D).

licenses as the appropriate methodology to ensure that designated entities will have meaningful access to spectrum. In addition, this approach will unblock access to large amounts of fallow spectrum, enabling the provision of spectrum-based services to rural communities.

The Alliance also urges the Commission to re-evaluate mechanisms such as installment payment plans and frequency blocks “set-asides” to determine whether a focused, modified implementation of these regulatory tools is appropriate. Furthermore, the Commission should continue to make auctioned spectrum available in smaller geographic licensed territories.

1. The Commission Should Adopt a “Fill-in” Policy for A and B Block PCS Licenses to Meet its Statutory Mandates

The stated purpose of the NOI is to assist the Commission in determining “the effectiveness of [its] current regulatory tools in facilitating the delivery of spectrum-based services to rural areas.”⁴ The Commission has indicated that it will change its “current regulatory tools” if such modifications are necessary.⁵

The Alliance submits that certain changes are critical to the goal of ensuring the availability of spectrum-based services to rural consumers. One “regulatory tool” which has severely hindered the delivery of spectrum-based services to rural areas is the current licensing design, which allows, and perhaps even encourages, large wireless carriers *to* hold unused spectrum in rural areas. This warehousing arises because service benchmarks are based solely

⁴ NOI at para. 1

⁵ *Id.*

on population coverage, without regard to geographic area coverage.⁶ As evidenced in the record, large wireless carriers often are not utilizing their entire spectrum allocation.’ For example, at the conclusion of the first construction benchmark for A and B Block PCS licensees (five years after license grant), the build-out requirements for Major Trading Area (“MTA”) licenses were met by providing service to only a very small portion of the geographic area within the A and B Block licensed areas.’ Because the next and final benchmark (ten years after license grant) requires only that these licensees make their services available to two-thirds of the population, it is very likely that, in rural markets where only a small percentage of the population resides, large portions of spectrum held by these licensees will remain unused.’

⁶ Because these benchmarks can be met while ignoring sparsely-populated areas, rural communities often are ignored.

⁷ *See, e.g., Amendments to Parts 1,2,27 and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands: Report and Order*, WT Docket No. 02-8, RM-9267, RM-9692, RM9797, RM-9854, RM9882 at 119 (rel. May 24,2002) (Commissioner Copps citing rural telecommunications providers as reporting that costs discourage large carriers from disaggregating or partitioning their licenses and that “they find it better business to let the rural spectrum lie fallow, even if the rural carriers are interested in using it”).

⁸ *See* Comments of the Rural Cellular Association (“RCA”) in WT Docket No. 00-230, filed February 9,2001 at 3-4 (citing the Commission’s build-out information of A and B Block PCS Licenses posted on its webpage and noting that at the end of the five year build-out period, approximately only 14percent of the Basic Trading Areas (“BTAs”) within the A and B Block MTA license areas were served).

See id. (noting that in these rural areas where A and B Block PCS licensees are not providing service, it is likely that there will be 60 MHz of spectrum that remains fallow).

This obviously inefficient use of spectrum in rural areas undermines the Commission's suggestion that allocating spectrum in large geographic licenses universally is the "most efficient" methodology, and in the public interest." Further, as one commenter has demonstrated in a spectrum-related proceeding, the provision of nationwide wireless carrier offerings should not preclude statutory mandates that rural telephone companies and other small businesses be afforded meaningful access to spectrum.¹¹

First introduced by the Rural Cellular Association more than two years ago,¹² a "fill-in" policy for A and B Block licensees (similar to the policy in place for cellular "unserved" areas) would benefit consumers in underserved areas and address the waste of a valuable public resource. Under this proposal, rural telecommunications companies and other small businesses would apply for "fill-in" rights in specified areas unserved by an MTA licensee at the end of the five-year build-out period for A and B Block licensees, which has already expired. Consistent with the statutory mandate, "fill-in" applications would be entertained only in geographic areas where no "designated entity," as defined by Section 1.2110 of the Commission's Rules,¹³ is

¹⁰ NOI at para. 19 (emphasis supplied). The Commission notes that due to its belief that large licenses utilize spectrum most efficiently, it approves "footprint-enhancing transfers and assignments" on the basis that they result in "important public benefits."

¹¹ Comments of RCA in DA 00-145 & 00-191, filed February 22, 2000, at 4.

¹² See, e.g., Comments of RCA filed on June 22, 2000 and Reply Comments filed on June 30, 2000 in WT Docket No. 97-82.; Comments of RCA filed on February 9, 2001 in WT Docket No. 00-230; Reply Comments of RCA filed on May 15, 2001 in WT Docket No. 01-14.

¹³ 47 C.F.R. § 1.2110.

providing cellular or PCS service. After receiving notice that the application has been tiled, the existing A or B Block licensee would have an opportunity to “trump” the proposal contained in the fill-in application by demonstrating that the licensee will cover the designated area within the time frame proposed by the fill-in application. If the existing licensee fails to make the required demonstration, or fails to provide the promised service, the designated entity applicant could acquire the spectrum rights for the unserved or underserved designated area through a partitioning process.¹⁴

Adoption of this proposal would provide A and B Block licensees with the incentive to utilize the spectrum that clearly is absent from current partitioning, disaggregation, build-out requirements and proposed spectrum leasing rules. Implementation of a fill-in policy would further Congress’s and the Commission’s goals that spectrum-based services be deployed in rural areas, and that designated entities be afforded meaningful opportunities to obtain spectrum.

II. Statutory Mandates Require that the Commission Continue to Provide Meaningful Opportunities for Designated Entities to Acquire Spectrum in Auctions

Pursuant to the statutory mandate that rural telephone companies and other small businesses have meaningful opportunities to obtain spectrum, the Commission originally incorporated into its auction rules bidding credits, installment payment plans and frequency blocks “set-aside” to enhance the ability of rural telephone companies and other small businesses to participate in an auction process. When they were adopted, the Commission

¹⁴ In the NOI, the Commission invites comment on the concept embodied in the Alliance “fill-in” proposal when it asks whether the Commission “should apply the policy it has **adopted** with respect to unserved areas in the Cellular Radiotelephone Service to other services to promote wireless service in rural areas.” NOI at para. 24.

announced that these measures

will allow designated entities to overcome barriers that have impeded these groups' participation in the telecommunications arena, including barriers related to access to capital. They will enable the participation of entrepreneurs in the provision of wireless services and the resulting diversity of service offerings will increase customer choice and promote competition. These procedures will also promote economic opportunity by facilitating the licensing of small businesses, rural telephone companies and businesses owned by members of minority groups and women.¹⁵

When flaws emerged in these mechanisms, however, the Commission chose to abandon them completely rather than modifying or adopting alternative measures to achieve the same goals.¹⁶ The result is that bidding credits are the only "regulatory tool" still in use to fulfill the statutory mandate and assist rural telephone companies and other small businesses to overcome the barriers that prevent them from acquiring spectrum. Bidding credits alone, however, are not sufficient, especially in light of the yet unresolved issue surrounding the application of the Commission's "controlling interest standard" to telephone cooperatives.¹⁷ Accordingly, the Commission should re-evaluate the installment payment plan and "set-aside" mechanisms to determine their efficacy and utility if implemented in a more narrowly-focused manner. Further,

¹⁵ See *In the Matter of Implementation of Section 309(j) of the Communications Act Competitive Bidding: Second Report and Order*, 9 FCC Rcd 2348, 2389 (1994).

¹⁶ See, e.g., Reply Comments of the C Block Coalition filed March 1, 2000 in DA 00-145; DA 001-191 at 2 (noting that the record reflects that "no initiative of the Commission . . . has succeeded in resurrecting the full promise of the C- and F- Block set-asides").

¹⁷ As noted in the NOI, there exist pending petitions for reconsideration of these rules which submit that application of the Commission's "controlling interest standard" in its auction attribution rules "inappropriately disqualify rural telco cooperative applicants from attaining small business bidding status." NOI at n.61.

the Commission should maintain and reinforce its current procedure of auctioning spectrum in MSA/RSA size geographic territories. As demonstrated by the increased number of rural telephone companies and other small businesses that participated in the auction and were awarded licenses in the recent 700 MHz Lower Band Auction, RSAs are better suited for service by rural telecommunications providers than are larger geographic territories.¹⁸

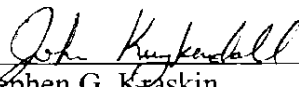
¹⁸ See NOI at para. 6 (noting that in the 700 MHz Lower Band auction, “89 percent of qualified bidders that identified themselves as rural telcos won licenses”).

111. Conclusion

Accordingly, to further Congressional directives that spectrum-based services be deployed in rural areas, and that designated entities be afforded meaningful opportunities to obtain spectrum, a “fill-in” policy for the unserved portions of A and B Block licenses should be adopted. Additionally, in furtherance of the Congressional directive that designated entities be afforded meaningful opportunities to obtain spectrum in auctions, the Commission should re-evaluate the installment payment plan and “set-aside” mechanisms to determine if they can be implemented in a more focused, modified manner, and maintain and strengthen its current procedure of auctioning spectrum in MSA/RSA size geographic territories.

Respectfully submitted,

RURAL SPECTRUM ALLIANCE

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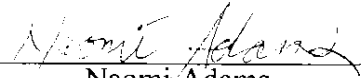
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CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Comments of the Rural Spectrum Alliance" in WT Docket No. 02-381 was served on this 3rd day of February 2003, via hand delivery to the following parties:


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